6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R09-RCRA-2021-0628; FRL- FRL-9760-02-R9]

Hawaii: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action on the authorization of Hawaii's changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). These changes correspond to certain Federal rules promulgated between July 1, 2016, and June 30, 2020, (also known as RCRA Clusters XXV to XXVIII) and for authorization of state-initiated changes that are equivalent to or more stringent than the Federal program. We have determined that these changes satisfy all requirements needed for final authorization.

DATES: This authorization is effective on [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** without further notice, unless the EPA receives adverse comment by [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. If the EPA receives adverse comment, we will publish a timely withdrawal in the *Federal Register* informing the public that the authorization will not take effect.

ADDRESSES: All documents in the docket are listed in the www.regulations.gov index. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy. You may also view Hawaii's application by contacting the Hawaii Department of

Health Solid and Hazardous Waste Branch at (808) 586-4226, Monday through Friday, 8:30 a.m. to 4:30 p.m.

Instructions: Submit your comments to EPA, identified by Docket ID No. EPA-R09-RCRA-2021-0628, at https://www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). The https://www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through https://www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Dani Allen-Williams, AllenWilliams.dani@epa.gov, 415-972-3800

SUPPLEMENTARY INFORMATION:

A. Why is the EPA using a direct final authorization?

The EPA is publishing this authorization without a prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. This action is a routine program change. However, in the "Proposed Rules" section of this issue of the *Federal Register*, we are publishing a separate document that will serve as the proposed rulemaking allowing the public an opportunity to comment. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this authorization, see the ADDRESSES section of this document.

If the EPA receives adverse comment, we will publish a timely withdrawal in the *Federal Register* informing the public that this direct final authorization will not take effect. We will address all public comments in a subsequent final authorization and base any further decision on the authorization of the state program changes after considering all comments received during the comment period.

B. Why are revisions to state programs necessary?

States that have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask the EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time they take effect in unauthorized states. Thus, the EPA

will implement those requirements and prohibitions in Hawaii, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

C. What decisions has the EPA made in this authorization?

Hawaii submitted a complete program revision application dated October 15th, 2021, seeking authorization of changes to its hazardous waste program corresponding to certain Federal rules promulgated between July 1, 2016, and June 30, 2020, plus state-initiated changes discussed in Section G below. The EPA concludes that Hawaii's application to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, the EPA proposes to grant Hawaii final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in section F of this document.

Hawaii has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its program revision application, subject to the limitations of HSWA, as discussed above.

D. What is the effect of this authorization decision?

The effect of this decision is that the changes described in Hawaii's authorization application will become part of the authorized State hazardous waste program and will therefore be federally enforceable. Hawaii will continue to have primary enforcement authority and responsibility for its State hazardous waste program. The EPA will maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to: conduct inspections, and require monitoring, tests, analyses, and reports; enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which the EPA is authorizing Hawaii are already effective under State law and are not changed by this action.

E. What has Hawaii previously been authorized for?

Hawaii initially received final authorization on November 13th, 2001, (66 FR 55115) to implement its base hazardous waste management program. Hawaii received authorization for revisions to its program on August 28, 2018 (83 FR 43772).

F. What changes is the EPA authorizing with this action?

Hawaii submitted a final complete program revision application to EPA dated October 15th, 2021, seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between July 1, 2016, and June 30, 2020, (also known as RCRA Clusters XXV to XXVIII) and for authorization of state-initiated changes that are equivalent to or more stringent than the Federal program. EPA proposes to determine, subject to receipt of written comments that oppose this action, that Hawaii's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all the requirements necessary to qualify for authorization. Hawaii incorporates by reference the Federal RCRA regulations in effect as of July 1, 2020, in Hawaii Administrative Rules (HAR) Chapters 11-260.1 to 11-279.1 (effective June 07, 2021). The applicable Federal rules and analogous State rules are identified in the table below.

Federal hazardous waste requirements	**Analogous State authority**
40 C.F.R. parts 260-266, 268, 270, 273, 279, effective July 1, 2020	Hawaii Administrative Rules (HAR) chapters 11-260.1-266.1, 11-268.1, 11-270.1, 11-273.1, 11-279.1, effective June 07, 2021

40 CFR Part 124 subparts A and B effective July 1, 2020	HAR chapter 11-271.1, effective June 07, 2021

G. Where are the revised State rules different than the Federal rules?

Under RCRA section 3009, the EPA may not authorize state rules that are less stringent than the Federal program. Any state rules that are less stringent do not supplant the Federal regulations. State rules that are broader in scope than the Federal program requirements are allowed but do not become part of the enforceable Federal program. State rules that are equivalent to or more stringent than the Federal program may be authorized, in which case they are enforceable by the EPA.

This section does not discuss the program differences previously published in Hawaii's previous program authorization in 2018, at 83 FR 43772 (Aug. 28, 2018). Areas identified in the 2018 program authorization as more stringent or broader in scope than the Federal program have been carried forward into the new regulations as amendments or additions to the incorporation by reference of the Federal regulations. This section discusses new State requirements that are equivalent to or more stringent than the Federal program and thus authorized.

1. Solar panel universal waste

The state has added "solar panels" to chapter HAR 11-273.1, as a category of universal waste and defined waste management and labeling/marking requirements for this type of universal waste. Many different types of solar panels may be toxicity characteristic hazardous waste due to the presence and concentration of one or more metals or metalloids (e.g. arsenic, cadmium, chromium, copper, lead, selenium, silver). The state also determined that solar panels (as defined in chapters HAR 11-260.1 and 11-273.1) as a category meet the criteria of 40 CFR § 273.81. EPA allows authorized states to create regulations for state-only universal wastes provided that these criteria are met for the waste or waste category, including the key

requirements that universal waste management is sufficiently protective of human health and the environment and that regulation as universal waste increases the likelihood of similar unregulated wastes (such as Very Small Quantity Generators (VSQG) or household wastes) being diverted from non-hazardous to hazardous waste management systems. The state regulations defining solar panels and associated management standards were crafted based on comparable universal waste regulations proposed and/or codified by other authorized state hazardous waste programs.

2. Removal of electronic nicotine delivery systems (ENDS) from the definition of pharmaceutical

EPA's "Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine" rule (84 FR. 5816 (Feb. 22, 2019)) establishes streamlined standards for handling hazardous waste pharmaceuticals to better fit the operations of the healthcare sector while maintaining protection of human health and the environment. In the Federal rule, the definition "pharmaceutical" includes "any electronic nicotine delivery system (e.g., electronic cigarette or vaping pen); or any liquid nicotine (e-liquid) packaged for retail sale for use in electronic nicotine delivery systems (e.g., pre-filled cartridges or vials)." This inclusion of electronic nicotine delivery systems (ENDS), including e-liquids, in the definition "pharmaceutical" also means that retailers of ENDS are included in the Federal definition "healthcare facility." The State has adopted definitions that separate ENDS from pharmaceuticals and ENDS retailers from healthcare facilities. The management standards for handling these wastes remain the same as those in the Federal rules, making the State rule functionally equivalent.

3. Emergency telephone numbers

The State allows the use of emergency telephone numbers (which may be a work cell phone) in lieu of home addresses and phone numbers for emergency coordinators in contingency plans for Treatment, Storage, and Disposal Facilities in 40 CFR 264.52(d), as incorporated and

amended in chapter HAR 11-264.1. This is consistent with the change made to contingency plans for generators as part of EPA's Generator Improvements Rule.

4. Regulatory clarifications:

a. Applicability of solvent-contaminated wipes exclusions

A reference to the definition of solvent-contaminated wipes (in 40 CFR 260.10, as incorporated and amended in chapter HAR 11-260.1,) is added to 40 CFR 261.4(a)(26) and (b)(18), as incorporated and amended in chapter HAR 11-261.1, to clarify the scope of these conditional exclusions.

b. Generator Improvement Rule cross-references

Remaining cross-references to 40 CFR §§261.5 and 262.34, sections that were removed by the Generator Improvements Rule, have been corrected throughout the State rules.

c. Pharmaceuticals waste codes for manifests

The State rules allow healthcare facilities to use either the four-character code "PHRM" or the word/code "PHARMS" in block 13 of the uniform hazardous waste manifest (40 CFR 266.508, as incorporated and amended in chapter HAR 11-266.1). The Federal rules currently require "PHARMS," but data system limitations have led EPA to issue guidance allowing the use of either code.

d. References to 40 CFR parts 271 and 272

40 CFR part 271 contains the requirements for state program authorization and some state programs are codified in 40 CFR part 272. The State regulations do not incorporate or contain equivalents to 40 CFR parts 271 and 272, so the State has removed cross-references to these parts from chapters HAR 11-260.1 to 11-273.1.

e. Applicable rules for non-hazardous contents drained from aerosol cans

The State has changed "or" to "and" in "applicable Federal, State, *and* local solid waste regulations" in 40 CFR 273.13(e)(4)(vi) and 273.33(e)(4)(vi), as incorporated and amended in

chapter HAR 11-273.1. This clarifies the Federal intent that all applicable solid waste regulations apply to the non-hazardous contents drained from universal waste aerosol cans.

H. Who handles permits after the authorization takes effect?

Hawaii will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. Section 3006(g)(1) of RCRA, 42 U.S.C. 6926(g)(1), gives EPA the authority to issue or deny permits or parts of permits for requirements for which the State is not authorized. Therefore, whenever EPA adopts standards under HSWA for activities or wastes not currently covered by the authorized program, EPA may process RCRA permits in Hawaii for the new or revised HSWA standards until Hawaii has received final authorization for such new or revised HSWA standards.

1. What is codification and is the EPA codifying Hawaii's hazardous waste program as authorized in this authorization?

Codification is the process of placing citations and references to the state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. The EPA does this by adding those citations and references to the authorized state rules in 40 CFR part 272. The EPA is not codifying the authorization of Hawaii's revisions at this time. However, the EPA reserves the ability to amend 40 CFR part 272, subpart L, for the authorization of Hawaii's program changes at a later date.

J. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes state requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by state law. Therefore, this action is not subject to review by OMB. I certify that this action will not have a significant

economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of a state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a State's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this authorization, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity,

minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). "Burden" is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994), as amended by Executive Order 14008 (86 FR 7619, February 1, 2021), establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action authorizes pre-existing state rules that are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by state law, and there are no anticipated significant adverse human health or environmental effects, this authorization is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. § 804(2).

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Dated: April 25, 2022.

Martha Guzman Aceves
Regional Administrator,
Region IX
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